



February 4, 2013

Senator Jill N. Tokuda, Chair  
Senator Michelle N. Kidani, Vice Chair  
Senate Committee on Education

Senator Donovan Dela Cruz, Chair  
Senator Sam Slom, Vice Chair  
Senate Committee on Economic Development,  
Government Operations and Housing

**Comments and testimony in Support of SB 1096 Relating to Public School Redevelopment (Establishes framework for the development of twenty-first century school lands by the Hawaii Community Development Authority).**

**Monday, February 4, 2013, 1:30 p.m., in CR 414**

The Land Use Research Foundation of Hawaii (“LURF”) is a private, non-profit research and trade association whose members include major Hawaii landowners, developers and a utility company. LURF’s mission is to advocate for reasonable, rational and equitable land use planning, legislation and regulations that encourage well-planned economic growth and development, while safeguarding Hawaii’s significant natural and cultural resources, and public health and safety.

**SB 1096.** The purpose of this bill is to grant the Hawaii Community Development Authority (“HCDA”), in conjunction with the State Department of Education (“DOE”) and State Board of Education (“BOE”), the responsibility to facilitate the redevelopment of public school lands in order to generate income to improve public school facilities and infrastructure to meet the challenges of the twenty-first century.

**LURF’s Position.** LURF supports **SB 1096**, because it looks to and establishes innovative methods through which the State may use its assets to obtain funding to benefit Hawaii’s public schools and public school children. This bill recognizes the unmet community development needs of the State, including undercapitalized public school facilities, and the need to establish within the DOE, BOE and HCDA, a public entity or mechanism which shall determine public school facilities redevelopment and community development programs, and cooperate with private enterprise and the various components of federal, state and county governments in bringing the plans to fruition. LURF’s testimony also includes **comments and clarifications** for this Committee to consider.

## **Background.**

- **Prior LURF support for similar legislation.** Over the years, LURF has consistently supported creative legislation, especially legislation targeted to further education in this State. Other prior education-related efforts by the DOE, LURF and other stakeholders over the past years include:
- **SB 292 (2005) proposal to grant DOE Asset Management authority.** In 2005, pursuant to SB 972, the legislature considered the establishing the authority of the Board and the DOE to own and administer all of the lands and facilities being used for the public schools of Hawaii.
  - **SB 611 (2007) proposal to transfer lands and facilities to DOE; establishment of DOE Advisory Council.** In 2007, a similar version was presented as SB 611, which proposed to transfer all public lands and facilities in use for public schools to the DOE. That bill also empowered the Board and the DOE to acquire, sell, lease, transfer, hypothecate, develop, and enter into agreements for the improvement of lands and facilities under its control for the support of the public schools. SB 611 was the result of one of the working groups from the DOE Advisory Council, which was created to evaluate the merits of the DOE's various proposals being implemented, and to make recommendations on establishing measurable goals and objectives.
  - **SB 690 (2007) proposal for DOE cost-benefit analysis and additional school funding based on savings from school closures or consolidation.** This proposal would have required the DOE to do a cost-benefit analysis to determine the cost savings of school closures or consolidations, and would have required that 50% of the savings be retained by the affected schools for a period of not less than five years.
  - **HB 2972 (2008) proposal to identify underused public schools and revitalize public school facilities; and establish a DOE Facilities Alignment Commission.** The purpose of this bill is to revitalize the DOE school facilities statewide and to more effectively and efficiently use our taxpayers' investment in public education. Specifically, this bill provided for the timely construction, expansion, consolidation, or closure of underused public schools in Hawaii through an objective and transparent process. This proposed bill would create a Facilities Alignment Commission, which would establish criteria for the selection of public schools to be constructed, expanded, consolidated, or closed; and recommend areas for new school construction, schools for expansion, consolidation, or closure. It would have also required the BOE to comply with these recommendations if the Legislature does not disapprove of them in their entirety.

In 2007, LURF also testified in support of legislation proposed to establish a two-year pilot project within a designated complex area which would authorize reallocation of resources within the schools in the complex area to achieve greater efficiency and cost-effectiveness. As noted in LURF's 2007 testimony in support of the above measures (updated and confirmed by DOE News Release dated October 18, 2010), at that time, the DOE had approximately the same number of students enrolled in public schools (+/- 180,000) as it did 30 years ago, the difference being that the concentration of the student population has moved. This creates situations such as with the present bill,

where existing assets are underused and provides opportunities to reposition these DOE real estate assets for future needs. Possibilities include redevelopment of the site for a new school; allowing for mixed use with a redeveloped school and teacher housing; or providing for new revenue sources based on long term leasing of the DOE property.

➤ **Other initiatives to consider.** The following are various other initiatives that the DOE, BOE, HCDA, other stakeholders, and the Legislature may wish to consider pursuing in the future:

- **Capital Improvement Projects (“CIP”) Public Private Partnership Group.** One of the working groups from the DOE Advisory Council was the CIP Public Private Partnership group, which explored “non-traditional” alternatives for building new schools, or redeveloping existing schools. The term “non-traditional” was meant to describe the processes or methods not presently being used by the DOE.
- **Common School Fund Program.** The idea of giving the DOE the power and authority to own the land under the school facilities is based on the “Common School Fund” programs or “Land Grant Schools” on the mainland. Many of the school lands in the western United States were provided by Congress to each of the states via “land grants” at the time each state joined the United States. The land grants were originally made for a single explicitly stated purpose - to support common schools and similar public institutions. These granted lands are generally known as “Common School Fund Lands,” and are held by the states, together with any permanent funds and revenues generated from the lands, and all of those assets are generally viewed as a “trust.” Most of the western states manage the Common School Fund Lands, either for use as school sites, or to generate revenues for the schools. The corpus of the trust is determined by the value of the land, any permanent funds and any revenues generated by the lands. Hence, the trust land managers in those states approach their management responsibilities under the same array of rules and enforcement mechanisms that surround any legal trustee with fiduciary duties.
- **Management of DOE lands as “trust” lands for the benefit of DOE schools and programs.** The prior Hawaii legislation listed above was based on an idea similar to the “Common School Fund Lands program - - that the existing DOE school lands could be used to create a trust for the DOE public schools. Somewhat like Kamehameha Schools Bishop Estate (“KSBE”), the DOE lands could then be managed as a “trust,” and the DOE will have the ability to leverage underutilized land assets for redevelopment, joint venture, revenue production, and other opportunities similar to KSBE or any other real estate corporation. Considering the need to attract and retain teachers, and the prospects of a fixed-guide-way system for Oahu, the bill would potentially allow for the repositioning of some of the “underused school sites” in the City’s Primary Urban Center to be redeveloped to provide teacher housing and/or generate income for the DOE as a center for a mixed-use transit oriented development (“TOD”).

**Conclusion.** LURF supports SB 1096 as an inventive means of utilizing excess and underused assets to generate funding for the benefit of public school children. However, in order to effectuate the purposes of SB 1096, and other similar initiatives, LURF suggests that this bill be further clarified as follows:

- **HCDA's role.** Section 1 currently does not include HCDA as one of the various stakeholders which may play a meaningful role in the planning, design and partnership between the schools and surrounding community. Section 2 specifically authorizes the DOE to identify the specific school redevelopment sites and BOE to authorize the redevelopment sites and use; however, it does not specifically include HCDA as part of the identification process public school redevelopment sites. Section 6 also limits HCDA's role to preparing a community development plan for public school facilities.

Section 1 should be revised to authorize HCDA to work with teachers, administrators, students, parents, community residents and other stakeholders in the planning, design and partnership between the school and the surrounding community. Also, Sections 2 and 6 of the current bill should be clarified to afford the HCDA the authority and flexibility to be involved with the DOE and the BOE in process to identify public school redevelopment sites and allow it to explore and consider any and all options relating to the use of public school lands, so as not to limit the HCDA to only the responsibility to facilitate the redevelopment of public school lands which have already been identified by DOE and authorized by BOE.

- **Consultation and cooperation with the Counties.** Many of the public school sites are owned by the Counties (in the past, public schools were the responsibility of the Counties) and the proposed redevelopment of school sites may require cooperation and coordination with the Counties with respect to public utilities and services (sewer, water, roadways, police, fire, etc.). This committee should consider revisions to provide that when dealing with public school lands owned by the Counties, the DOE and HCDA shall agree to consult and cooperate with the Counties to resolve any and all issues which may arise between them including development-related issues.

Thank you for the opportunity to express support for this measure.

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LATE TESTIMONY

February 4, 2013

The Honorable Jill N. Tokuda, Chairperson  
The Honorable Michelle N. Kidani, Vice Chairperson  
and Members of the Senate Committee on Education

The Honorable Donovan M. Dela Cruz, Chairperson  
The Honorable Sam Slom, Vice Chairperson  
and Members of the Senate Committee on Economic Development,  
Government Operations and Housing  
Hawaii State Capitol  
415 South Beretania Street, Room 414  
Honolulu, HI 96813

SUBJECT: SB 1096 – RELATING TO PUBLIC SCHOOL REDEVELOPMENT

Dear Chairs and Committee Members:

My name is Don Horner. I serve as chair of the Board of Education. Our board has not had an opportunity to meet to discuss the proposed legislation, therefore, I am testifying as a private citizen.

In 2004, this legislature passed a comprehensive education bill called Act 51 which was optimistically called "Reinventing Education."

I had the privilege to serve as vice chair of the implementation task force. The basic premise of Act 51 was that policy makers should set overall student achievement standards and hold the educators accountable for specific student achievement goals.

Under Act 51, student achievement was mostly defined as the responsibility of the principal and the Complex Area Superintendents.

The Act provided school level increased accountability and autonomy and also provided schools with more resource focus: principal training, weighted student formula monies, financial planning tools, new student database, a new business manager position in all the complexes, and the support of a new School Community Council that had specific advisory functions.

Additionally, the DOE and the BOE have seen significant changes both administratively and functionally to be more responsive and focused on student achievement.

Under Act 51, the Department of Education was given not only added accountability, but also increased "authority." For example, the DOE assumed responsibility from the Department of Human Resources Development for the personnel management functions of the 6,000 DOE civil service employees.

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The Department assumed the responsibility for the construction, repair, and major maintenance of school facilities from the Department of Accounting and General Services.

Resources that were allocated to schools by numerous program managers in the state office now go directly to the schools via the weighted student formula, which offers better transparency and more accountability.

Over the last 24 months every major DOE department head, all BOE members, and over 40 percent of the Complex Area Superintendents have been replaced.

My point is, Act 51 is indeed "reinventing education" and more importantly, we have seen a steady and important improvement in student achievement. More needs to be done, but we have come a long way.

However, an important challenge that was not addressed under Act 51 was school facilities. Our average school facility is 50+ years old and therefore, requires ongoing costly maintenance and is energy and design inefficient. Additionally, we typically have an oversupply of classrooms in the urban core and are classroom deficient in our nonurban core communities and neighbor islands, due to demographic population shifts.

Our facility challenges have been further compounded over the years by a proliferation of central administrative functions spread throughout our school properties with little regard to a strategic vision or operational efficiencies.

I testify in favor of the intent of SB 1096 to consider the use of DOE lands to establish a fund to address needed infrastructure school improvements. I do, however, want to note that the "Public school facilities redevelopment guidance policies" should make clear that the use of all public school lands should place a priority on benefiting public school facilities. Additionally, we respectfully request that the school facilities special fund be used exclusively for the benefit of public school facilities and in consultation with the Department of Education and the Board of Education.

The DOE in accordance with the new BOE/DOE strategic plan is in the process of inventorying our real estate assets and beginning to develop a strategy in regards to the centralization of our administrative support offices. The anticipated result is the potential availability of more real estate availability especially in the Honolulu urban core.

Thank you for the opportunity to testify and your strong and effective support of public education.

Sincerely,

A handwritten signature in black ink, appearing to read "Don Horner", written in a cursive style.

Donald G. Horner